S.B.Civil Writ Petition NO.724/2005

Municipal Board, Ratangarh

vs

Board of Revenue, Rajasthan Ajmer & Ors.

DATE OF ORDER : - 7.2.2005

HON'BLE MR. PRAKASH TATIA,J.

Mr. T.S.Champawat, for the petitioner.

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Heard learned counsel for the petitioner.

Brief facts of the case are that the plaintiff-respondent filed the suit for declaration of his Khatedari rights and for relief of injunction under Sections 88, 92A, 188 of the Rajasthan Tenancy Act. The petitioner raised an objection about the maintainability of the suit on the ground that the suit land is recorded as Abadi land in the revenue record, therefore, the plaintiff's suit is not maintainable. The trial court allowed the objection of the petitioner and held that the suit deserves to be rejected under Order 7 Rule 11(d) and Order 7 Rule 12 CPC because of the fact that the land in question is Abadi land, which is recorded in the revenue record.

The plaintiff Jai Narayan preferred an appeal before the Revenue

Appellate Authority-cum-Land Record Officer, Bikaner. The Appellate Authority set aside the order of the trial court dated 4.1.1995 and held that for determining the jurisdiction, the court can look into the facts mentioned in the plaint and the relief claimed. According to Appellate Authority since plaintiff claimed himself to be the Khatedar tenant in the land in dispute and challenging the entries made in the revenue record, therefore, the relief can be granted by the revenue court and not by the civil court.

The petitioner Municipal Board, Ratangarh preferred appeal against the appellate order before the Board of Revenue. The said appeal was dismissed by the Board of Revenue also.

The petitioner is aggrieved against the order passed by the Revenue Appellate Authority-cum-Land Record Officer dated 23rd August, 1996 and order of the Board of Revenue dated 4th May, 2000.

According to learned counsel for the petitioner this court in the case of Gopal Vs. Durga Prasad reported in RLW 1974 151 held that merely because a portion of Abadi land is being used as garden or for cultivation will not change character of land and it has also been held that Abadi land leased for cultivation, still the decree for eviction could be granted only on grounds enumerated in Section 13 of the Rajasthan

Premises (Control of Rent and Eviction) Act, 1950. Learned counsel for the petitioner further relied upon the judgment of this court delivered in the case of RSEB,Jaipur Vs. Rambadu reported in RRD 1988 159. According to learned counsel for the petitioner this judgment was wrongly applied by the courts below.

I considered the submissions of learned counsel for the petitioner and perused the judgment referred above.

It is clear from the facts mentioned in the plaint itself and noted by the two courts below that the plaintiff filed the suit for declaration of his Khatedari rights by saying that the entry made in the revenue record is wrong, though there is a presumption in favour of the entry, but that presumption is since rebuttable and in case plaintiff is able to prove that the entry in the revenue record mentioning it as Abadi land is wrong then he may prove his case and get the relief only from the revenue court looking to the nature of the dispute and looking to the facts as alleged in the plaint. The courts below were right in holding that the suit is triable by the revenue court and not by the civil court. In the case of Gopal (supra) there was no dispute that land in question was Abadi land and the plea was that the Abadi land was leased out for cultivation. This court observed that by using the Abadi land for cultivation will not change the character of the land.

In view of the above, the judgments relied upon by learned counsel for the petitioner have no application to the facts of this case.

Hence, I do not find any merit in this writ petition and the same is hereby dismissed.

(Prakash Tatia), J.

c.p.goyal/-